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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,628

03/22/2005

Jean-Marc Reme

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

SURVILLO, OLEG

ART UNIT

PAPER NUMBER

2442

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/528,628</p>	<p><b>Applicant(s)</b> REME, JEAN-MARC</p>	
	<p><b>Examiner</b> OLEG SURVILLO</p>	<p><b>Art Unit</b> 2442</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-7 and 9-16.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

/Andrew Caldwell/  
Supervisory Patent Examiner, Art Unit 2442

Continuation of 3. NOTE: As to proposed amendment to independent claims 1, 4, 5, 9, 10, and 12, this amendment would change the scope of the invention and would necessitate further consideration and search.

Continuation of 13. Other: Regarding the rejection of claims 1-7 and 9-16 under 35 U.S.C. 112, first paragraph, Applicant's arguments have been fully considered but they are not persuasive. Therefore the rejection is maintained. In attempt to provide support in the original disclosure for the newly claimed subject matter, Applicant relies on page 3 lines 11-14 and 26-32, Table 1, page 4 lines 4-11 and 19-21 of the specification, as filed. However, none of the cited portions of the specification can be seen to discuss "selecting one of said connections" or "last random access point is correlated with an access point" or "connection determined based on an available bandwidth associated with said selected terminal". In particular, neither cited portions of the specification nor any other portions of the original disclosure recite selecting a terminal or selecting a connection. Specification briefly mentions that any connection available to the user can be utilized to carry out the streaming session. However, there is no mention of what constitutes selecting one of said connections available to the user, as currently claimed. Thus, the original disclosure fails to provide an antecedent basis for the step of selecting a connection or selecting a terminal. Applicant is advised to amend the claims such that claimed limitations have a proper antecedent basis in the specification and are commensurate in scope with the original disclosure. Also, neither cited portions of the specification nor any other portions of the original disclosure recite "said connection being determined based on an available bandwidth". The only portion of the disclosure where bandwidth mentioned is at page 3 lines 5-14 of the specification, as filed. However, this portion discloses that the bandwidth available for the streaming application is determined on the basis of the state of the network; and the bandwidth required for transmitting the stream should match the available bandwidth. Thus, it is apparent that the available bandwidth is determined based on the state of the network, in particular, the state of the network connection between sending and receiving devices, and not the other way around, as presently claimed. Furthermore, as claimed, "an available bandwidth associated with said selected terminal" is not supported by the original disclosure because the cited portion of the specification discusses that an available bandwidth is associated with said connection, not terminal. It is not apparent how would one associate an available bandwidth with a terminal, especially when the terminal has more than one available connection. In addition, the original disclosure fails to provide an antecedent basis for an access point such that the last random access point is correlated with the access point, as presently claimed.

Applicant's support in the original disclosure for the proposed new limitation of: "said content being formatted in a plurality of encoding rates, said encoding rates associated with a corresponding connection, wherein said random access points are common in each of said formatted content" is verified and acknowledged.

At page 11 of the Remarks, Applicant argues without a reference to any specific claim that: "Lee fails to teach storing the information necessary to resume a video stream in the server. Nor does Lee teach different content formats being stored in the server having access points that are common among the different content formats". This argument is irrelevant because at least claim 1 does not specify that the information is being stored in the server. Thus, Applicant argues the unclaimed feature of the invention. It is noted that although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Applicant is advised to specify in at least claim 1 that the information necessary to resume a video stream is stored in the server.

Applicant further argues that: "neither Lee nor Hamilton teach or suggest that content stored in different encoding rates with access points common among the different content encoding rates or the use of different connections based on different terminals". This argument is directed to newly added limitations and would require further consideration. It is being noted, however, that at least claim 1 does not recite "different connections" or "different terminals".

Applicant still further argues that: "the combination of Lee and Hamilton fails to render obvious the invention claimed in the independent claims for at least failing to teach the terminal having one or more connections and that the resumption of the data stream with any connection available to the user". This argument is not persuasive because the limitation of "one or more connections" includes having only one connection, such that the data stream is resumed with the same connection, since it is the only connection available to said user. If Applicant's intent is to specifically claim that multiple connections that are available to said user, Applicant is advised to amend the claims accordingly.

Applicant argues at page 12 of the Remarks that: "the combination of Lee and Hamilton would create a device that is contrary to the teaching of Lee as Lee explicitly teaches storing information necessary to resume the transmission in the terminal device.....The use of a data base for the storing of similar information is redundant to the Lee disclosure as incorporating a data base to save this information would alter the teaching of Lee to save data on the terminals". This argument is not persuasive because storing of similar information in a data base, would supplement storing the information in the terminal device. The fact that such storing might be redundant does not necessarily mean that such combination would alter the teaching of Lee. Since Applicant fails to provide a corroborating evidence of that redundantly storing of similar information in a data base in addition to storing that information in the terminal device alters the teaching of Lee, Applicant's argument cannot be held as persuasive.

At page 13 of the Remarks, Applicant argues that: "neither Lee nor Hamilton provide any teaching of multiple streams of different encoding rates that may be used for the connection established after resumption of the transmission". This argument is directed towards unclaimed features of the invention because none of claims 3, 7 or 11 recite the limitation of "multiple streams of different encoding rates that may be used for the connection established after resumption of the transmission".

As to any arguments not specifically addressed, they are the same as those discussed above.